

January 12, 1996

Advisory Opinion 1996 - No. 1

QUESTION

Would it violate the State Ethics Act for a legislator to solicit or accept contributions of funds under the following circumstances: (1) The contributed funds would be used to pay the registration fees and travel expenses attributable to the legislator's (or legislators') attending an educational conference dealing with legislative issues; (2) Legislative facilities, equipment, supplies and employees would not be used in soliciting or accepting the contributions; and (3) The persons or entities that would be solicited, or from whom the funds would be accepted, would not sponsor or conduct the conference and some, or all, of these persons or entities would be lobbyists or involved in lobbying activities before the Legislature?

OPINION

The answer to this question is that the legislator's solicitation or acceptance of contributions, as provided in the question, would violate the State Ethics Act if the persons or entities solicited, or making the contributions, are registered lobbyists or are employers or retainers of registered lobbyists. If the persons or entities solicited, or making the contributions, are not registered lobbyists or employers or retainers of registered lobbyists, then, subject to conditions set forth in this opinion, the legislator's solicitation or acceptance would not violate the Act.

At the outset, we note that in the question before us neither public funds nor official legislative stationery would be used to make the solicitation. Therefore, our decision in **Advisory Opinion 1995 - No. 17** is inapplicable to this question.

We begin our analysis with the State Ethics Act provision, RCW 42.52.150, that generally prohibits legislators from accepting "gifts" valued at more than fifty dollars. By its terms, the provision only applies to "gifts." The Act's definition of "gift," in RCW 42.52.010(9)(f), expressly excludes from the definition:

(f) Payment of enrollment and course fees and reasonable travel expenses attributable to attending seminars and educational programs sponsored by a bona fide nonprofit professional, educational, or trade association, or charitable institution. As used in this subsection, "reasonable expenses" are limited to travel, lodging, and subsistence expenses incurred the day before through the day after the event; conferences that meet certain requirements.

Most educational conferences that legislators attend would seem to fall within this exclusion. Therefore, if the travel expenses are "reasonable expenses" under the definition, then, it is likely that, in the question before us, the fifty dollar limit would not apply.

The next step in our analysis is the application of the Act's "reasonable expectation" rule, RCW 42.52.140, to the legislator's solicitation or acceptance of the contributions. This rule prohibits a legislator from soliciting or accepting any thing of value, whether a "gift" or not a "gift", if the circumstances are such that "it could be reasonably expected" that the thing of value would influence the legislator's official judgment or was a reward for official conduct. This provision reads as follows:

No state officer or state employee may receive, accept, take, seek, or solicit, directly or indirectly, any thing of economic value as a gift, gratuity, or favor from a person if it could be reasonably expected that the gift, gratuity, or favor would influence the vote, action, or judgment of the officer or employee, or be considered as part of a reward for action or inaction.

So that we can provide legislators with some certainty in knowing how this provision applies to the solicitation and acceptance of contributions under the circumstances specified in the question, we advise as follows: We interpret the provision as barring legislators, under the circumstances specified in the question, from soliciting or accepting contributions from lobbyists registered under the Public Disclosure Act¹ or from persons or entities that employ or retain such registered lobbyists.

We now deal with the remaining issue of whether contributions may be solicited or accepted from persons or entities who are not registered lobbyists or employers or retainers of registered lobbyists. In doing so, we will assume that, in the question before us, the contributions would be excluded from the "gift" definition under the previously quoted paragraph (f) of RCW 42.52.010(9) and that, therefore, the fifty dollar limit would not apply to them. Subject to that assumption, we interpret RCW 42.52.140 as authorizing legislators to solicit and accept contributions from persons or entities who are not registered lobbyists or employers or retainers of registered lobbyists, so long as the house to which the legislators belong has officially approved the conference as dealing predominantly with educational issues of legislative concern and other conditions in this opinion are met. This interpretation is consistent with

¹ RCW 42.17.150 requires lobbyists to register with the Public Disclosure Commission before doing any lobbying or within 30 days of employment as a lobbyist, whichever occurs first. RCW 42.17.160 contains exemptions from the registration requirement for small scale lobbyists and public officials and employees.

² We are aware that under the Public Disclosure Act, persons or entities can engage in small scale lobbying activities and not be required to register under the Act. While this opinion will permit senators and representatives to solicit and accept conference-related contributions from such persons or entities, it will only do so if the Senate or House first approves the conference.

The Public Disclosure Act, in RCW 42.17.160, exempts the following "persons and activities," among others, from the registration requirements:

. . . Persons who limit their lobbying activities to appearing before public sessions of committees of the legislature, or public

Advisory Opinion 1995 - No. 10 where we authorized members and staff of a House standing committee to attend a forest land tour approved by the House. In that opinion, we stated that:

The Board notes that under policies of the House of Representatives, standing committees of the House must obtain approval for their interim activities involving travel. Our answer to . . . [this question] is based on our understanding that the tour would be approved by the House of Representatives. In reaching this conclusion, the Board acknowledges the House's important administrative role over the travel and educational activities of its committees.

In that advisory opinion, we also provided a "cautionary note" in which we advised that the authorization to participate in educational tours would not include authorization to accept "payment for items, services, or other benefits that are not reasonably necessary to carry out the educational purpose of the tours and that are paid by a person, or entity, with a lobbying purpose. . . ." We stated that such payments may very well violate the "reasonable expectation" rule, as well as the fifty dollar limit on "gifts." We provide the same advise to the acceptance of contributions under the circumstances specified in the question before us here. Also, to avoid violating the "special privileges" rule,³ we advise that any solicitation of such contributions be accomplished in a fashion that does not expressly or impliedly threaten adverse legislative consequences should the person or entity solicited not make a contribution.

In **Advisory Opinion 1995 - No. 15**, we concluded that the State Ethics Act would not bar a member from accepting payment of travel costs to enable his spouse to attend a conference with him where the costs would be paid by longtime friends who did not have a lobbying interest. The basis for that opinion was RCW 42.52.010(9)(a), which defines "gift" as not including anything received from "friends where it is clear beyond a reasonable doubt that" the friends, generally, did not have any lobbying purpose. We affirm that opinion and also clarify that our opinion here would not require any legislative approval of the conference under the circumstances before the Board in that opinion.⁴ Similarly, legislative approval would not be required if the contributions fell under RCW 42.52.010(9)(b), which excludes from the "gift" definition "[i]tems related to the outside business of the recipient that are customary and not related to the recipient's performance of official duties."

hearings of state agencies;
. . . Persons who lobby without compensation or other consideration for acting as a lobbyist. . . ;
. . . Persons who restrict their lobbying activities to no more than four days or parts thereof during any three-month period and whose total expenditures during such three-month period for or on behalf of any one or more members of the legislature or state elected officials or public officers or employees of the state of Washington in connection with such lobbying do not exceed twenty-five dollars. . . .

³ The "special privileges" rule, RCW 42.52.070, was the basis of our opinion in **Advisory Opinion 1995 - No. 17** in which we concluded that a legislator could not use public resources to solicit contributions to enable legislators to attend an educational conference. The rule provides that, except when acting within the scope of office, "no state officer . . . may use his or her position to secure special privileges . . . for himself or herself . . . or other persons."

⁴ We recognize that under the circumstances before us in that opinion the conference had actually been approved by the Senate.